



§-29 & 31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 822/2017**

PR. COMMISSIONER OF INCOME TAX-14 Appellant
Through: Mr.Zoheb Hossain, Sr.Standing
Counsel.

Versus

KAMALJEET KHOSLA Respondent
Through: Mr.Rohit Kumar Gupta, Advocate
with Ms.Shayama Lima Borha, Advocate.

+ **ITA 824/2017**

PR. COMMISSIONER OF INCOME TAX – 14 Appellant
Through: Mr.Zoheb Hossain, Sr.Standing
Counsel.

Versus

KAMALJEET KHOSLA Respondent
Through: Mr.Rohit Kumar Gupta, Advocate
with Ms.Shayama Lima Borha, Advocate.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER

20.09.2017

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C.M.No.34509/2017 (delay in filing)

1. For the reasons explained in the application, the delay in filing the appeal is condoned. The application is disposed of.

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2. These two appeals are by the Revenue against an order dated 12th April, 2017 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.28/Del/2010 and C.O.No.214/Del/2010 for the block period 1st April,



1996 to 9th May, 2002.

3. The short question that arises for consideration is whether the initiation of the penalty proceedings by the Assessing Officer ('AO') in terms of Section 158BFA (3)(c) of the Income Tax Act, 1961 ('the Act') was time barred inasmuch as it was beyond six month's time from the end of the month in which the order of the ITAT was received by the Commissioner of Income Tax ('CIT') (Judicial) and not the "concerned CIT"?

4. The ITAT has in the impugned order relied on the decision dated 24th March, 2017 of this Court in ITA 52/2015 (*Odeon Builders Pvt. Ltd. Vs. Principal Commissioner of Income Tax*), and held that since the penalty order was beyond the period of six months after the order of the ITAT was first received by the CIT (Judicial), it was beyond time and, therefore, unsustainable in law.

5. It is submitted by the learned counsel for the Revenue that the decision of this Court in *Odeon Builders Pvt. Ltd. (supra)* was in the context of an appeal under Section 260A of the Act and, therefore, will not *ipso facto* apply to Section 158BFA(3)(c) although the expression used in both provisions is the same. Secondly, he submits that in the present case at the time the AO initiated the penalty proceedings, the decision in *Odeon Builders Pvt. Ltd. (supra)* had not been pronounced and, therefore, the said decision of this Court should be held to be prospective, that is, applicable only to those cases where the proceedings under Section 158 BFA (3) were initiated thereafter.



6. As far as the first submission is concerned, the Court finds that the expression “received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner” appearing in Section 158BFA(3)(c) is identical to the expression in Section 260A(1) of the Act which was interpreted by this Court in *Odeon Builders Pvt. Ltd.* (*supra*) as any CIT and not necessarily the 'concerned' CIT. In other words, for the purpose of Section 158BFA(3)(c) of the Act, if the order of the ITAT was received by the CIT (Judicial), the limitation of 6 months within which the penalty order had to be passed would begin to run from that date regardless of the fact that the order of the ITAT was received by the concerned CIT only thereafter.

7. As far as the second submission is concerned, this Court in *Odeon Builders Pvt. Ltd.* (*supra*) declared the law as it always stood. The question of the said decision applying only prospectively does not arise. While it will not result in matters that have attained finality being reopened, it will apply to cases that are pending at various levels in the hierarchy of authorities.

8. The Court, therefore, finds that there is no legal infirmity in the impugned order of the ITAT giving rise to any substantial question of law. The appeal is, accordingly, dismissed with no order as to costs.

A handwritten signature in black ink, appearing to be 'S. Muralidhar', is written above the printed name.

S. MURALIDHAR, J.

A handwritten signature in black ink, appearing to be 'Prathiba M. Singh', is written above the printed name.

PRATHIBA M. SINGH, J.

SEPTEMBER 20, 2017/ 'anb'